IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

FRIDAY, THE 5TH JANUARY 2007 / 15TH PAUSHA 1928

OP.No. 5164 of 1998(M)

PETITIONER:

M/S.HOTEL LUCIYA CONTINENTAL,
EAST FORT, THIRUVANANTHAPURAM,
REP.BY ITS GENERAL MANAGER.

BY ADV. SRI.U.K.RAMAKRISHNAN
SRI.P.V.LOHITHAKSHAN

RESPONDENTS:
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1. **SRI.C.M.STEPHEN, T./C.16/918/I TEJUS,**
PANCHAMI GARDENS, JAGATHI,
THIRUVANANTHAPURAM.

2. **THE REGIONAL PROVIDENT FUND COMMISSIONER,**
BHAVISHYANIDHI BHAVAN, P.B.NO. 1016,
PATTOM, THIRUVANANTHAPURAM 695 004.

3. **THE EMPLOYEES' PROVIDENT FUNDS**
APPELLATE TRIBUNAL, DELHI.

BY ADV. SRI.G.MOHAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 05/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S.SIRI JAGAN, J.

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O.P. No. 5164 of 1998

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Dated this the 5th day of January, 2007

J U D G M E N T

Hotel Luciya Continental, which is an establishment covered under the Employees' Provident Funds and Miscellaneous Provisions Act 1952, ("the Act" for short) has filed this original petition challenging Exts.P2 and P4 orders passed by the original and appellate authorities under the Act, whereby it has been held that the 1st respondent who was the personnel manager of the petitioner was also liable to be enrolled in the Fund under the Act and contributions paid in respect of him.

2. Two contentions are raised before me. The first is that being the personnel manager of the establishment, who is in actual control of the establishment, he cannot come within the definition of "employee" in the Act. The second is that the first respondent himself was the person responsible to enrol himself as the member of the Fund and to

pay contributions as both employer's and employee's by deduction from his salary. The establishment therefore, cannot be found fault with for the inaction of the employee for failure to make the deductions of contributions from his salary and to pay the same to the 2nd respondent.

3. I have heard the parties and considered the rival contentions in detail.

4. For deciding the question as to whether the personnel manager of a company is an employee covered under the Act, we have to look at the definition of "employee' in the Act, which is contained in Section 2(f) which reads thus:

> (f)"employee" means any person who is employed for wages in any kind of work, manual or otherwise, in or in connection with the work of [an establishment], and who gets, his wages directly or indirectly from the employer [and includes any person,-
>
> (i) employed by or through a contractor in or in connection with the work of the establishment;
>
> (ii) engaged as an apprentice, not being an apprentice engaged under the Apprentices Act, 1961 (52 of 1961), or under the standing orders of the establishment;]"

There is absolutely nothing in the said definition

which would even remotely suggest that a personnel manager of the establishment would not come within the definition of "employee" as extracted above. That being so, I do not find any merit in the contention that the personnel manager of the company, viz., the 1st respondent, is not an employee under Section 2(f).

5. Another contention raised is that he is the employer himself. The contention is that by Ext.P5 order which is another order passed under Section 7A of the Act against the establishment in which the 1st respondent himself was directed to pay contributions which were not paid by the establishment. Definition of "employer" is contained in 2(e) of the Act, which reads as follows:

> "employer" means-
>
> (i) in relation to an establishment which is a factory, the owner or occupier of the factory, including the agent of such owner or occupier, the legal representative of a deceased owner or occupier and, where a person has been named as a manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories act, 1948 (63 of 1948), the person so named; and

(ii) in relation to any other establishment , the person who, or the authority which, has the ultimate control over the affairs of the establishment, and where the said affairs are entrusted to a manager, managing director or managing agent, such manager, managing director or managing agent;]

Hotel Luciya Continental is owned by a company registered under the Companies Act. Simply because the 1st respondent was representing the establishment and he was directed to comply with the provisions of the Act, that does not make him the employer of the petitioner establishment. In fact I find that in the original petition Hotel Luciya Continental is represented by its general manager and not by the personnel manager. In any event, the personnel manager of the establishment cannot be the person who has the ultimate control over the affairs of the establishment. Even otherwise assuming that he would come within the definition of "employer", since he answers the definition of employee of the company, certainly in respect of him also contributions have to be necessarily paid.

6. Regarding the second contention that since

the 1st respondent himself was made personally responsible to pay contributions in respect of him, the petitioner cannot be saddled with the liability, I am of opinion that as far as the Provident Fund Authorities are concerned, they cannot be found fault with for the petitioner not taking appropriate steps to see that its employee complies with the statutory provisions which the establishment is liable to comply with in accordance with law.

7. For the above aid reasons, I do not find any merit in the original petition and accordingly the same is dismissed. However, this would be without prejudice to the right of the petitioner to recover from the 1st respondent any loss caused to the petitioner on account of his action, if they can do so under law.

Interlocutory applications stand closed.

sdk+ S.SIRI JAGAN, JUDGE

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J U D G M E N T

5th January, 2007